

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

DEMARCUS ALLEN

PLAINTIFF

VERSUS

CIVIL ACTION NO. 4:12cv27-CWR-LRA

**CHRISTOPHER EPPS, JOHNNY WRIGHT,
and DONNA FERGUSON**

DEFENDANTS

**MEMORANDUM OPINION AND ORDER ADDING
DEFENDANTS AND DISMISSING EPPS, WRIGHT, AND FERGUSON**

BEFORE THE COURT are *pro se* Plaintiff Demarcus Allen's pleadings. He is incarcerated with the Mississippi Department of Corrections and alleges a denial of medical treatment. The Court has considered and liberally construed the pleadings. For the reasons below, Defendants Christopher Epps, Johnny Wright, and Donna Ferguson are dismissed. The case shall proceed against newly named Defendants Dr. Kim and Nurses Gibson, Ellis, Measly, and Jordan.

BACKGROUND

On February 13, 2012, Allen filed the instant Complaint against Epps, Wright, and Ferguson. The Court granted Allen leave to proceed *in forma pauperis* and ordered him to clarify his claims against these Defendants and whether he was stating a claim for deliberate indifference to a serious medical condition. Because he did not respond, the Court issued an Order to Show Cause on April 24. Finally, on May 10, Allen responded to the order to clarify his claims. The response raises allegations against Dr. Kim of the Mississippi State Penitentiary and Gibson, Ellis, Measly, and Jordan of East Mississippi Correctional Facility. Allen did not respond to the Court's inquiries regarding the original Defendants.

DISCUSSION

The Prison Litigation Reform Act of 1996, applies to prisoners proceeding *in forma pauperis*

in this Court. One of the provisions reads, “the court shall dismiss the case at any time if the court determines that . . . the action . . . –(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). The statute “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). “[I]n an action proceeding under Section 1915(d), [a federal court] may consider, *sua sponte*, affirmative defenses that are apparent from the record even where they have not been addressed or raised.” *Ali v. Higgs*, 892 F.2d 438, 440 (5th Cir. 1990). “Significantly, the court is authorized to test the proceeding for frivolousness or maliciousness even before service of process or before the filing of the answer.” *Id.* The Court has permitted Allen to proceed *in forma pauperis* in this action. His Complaint is subject to *sua sponte* dismissal under Section 1915.

The Court examines the first two Defendants Epps and Wright. Other than naming them as Defendants, neither the Complaint nor Response [10] mentions these Defendants. Allen was given an opportunity to specifically state claims against them, but he did not do so. Therefore, Epps and Wright are dismissed for failure to state a claim against them upon which relief can be granted. These dismissals counts as a strike pursuant to 28 U.S.C. 1915(g).

As for Ferguson, Allen alleges she told him to fill out a sick call request and said he was not following the doctor’s orders. Allen does not explain how she violated his rights, despite being given the opportunity. She, too, is dismissed for failure to state a claim upon which relief can be granted against her. This dismissal counts as a strike under 28 U.S.C. 1915(g).

IT IS THEREFORE ORDERED AND ADJUDGED that the Clerk of Court shall add Dr. Kim, Nurse Gibson, Nurse Ellis, Nurse Measly, and Nurse Jordan as Defendants in this cause.

IT IS FURTHER ORDERED AND ADJUDGED that Defendants Christopher Epps, Johnny Wright, and Donna Ferguson should be and are hereby **DISMISSED WITHOUT PREJUDICE** for failure to state a claim against them upon which relief can be granted. This dismissal counts as a strike pursuant to 28 U.S.C. 1915(g). The remainder of the case shall proceed.

SO ORDERED, this the 22nd day of May, 2012.

s/Carlton W. Reeves
UNITED STATES DISTRICT JUDGE